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OFFICE OF PETITIONS

In re Application of :
Johnson, et al. :
Application No. 09/550,219 :
Filed: April 17, 2000 :
Attorney Docket No. IBMN.009US01 (0519) :
For: METHOD AND APPARATUS FOR :
PROCESSING PRINT JOBS VIA :
PARALLEL SPOOLING AND :
DESPOOLING OPERATIONS :

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed April 4, 2006 (certificate of mailing date March 30, 2006), to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **dismissed**.

Any further reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to properly reply to the September 6, 2005 final Office action, which set a three month extendable period for reply. Applicants filed an amendment after final on December 12, 2005 (certificate of mailing date December 6, 2005). The amendment after final failed to place the application in *prima facie* condition for allowance, as was explained in the March 16, 2006 Advisory action. Therefore, the Office contends the application became abandoned on December 7, 2005. A Notice of Abandonment was mailed on April 18, 2006.

Petitioners assert that the application is not abandoned because the Summary Sheet PTOL-326 indicated that the September 6, 2005 Office action was non-final. However, it is noted that the final page of the Office action states that the Office action was final. Petitioners argue that the Office action did not clearly state that the rejections were final and therefore, the holding of abandonment should be withdrawn.

It is noted that the Summary Sheet PTOL-326 found in Office records shows that the non-final box is marked with a typewritten "X" and the final box is marked with a handwritten "X".

Petitioners assert that their copy of the Summary Sheet PTOL-326 indicated that the Office action was non-final. There is no mention of the condition of the final box in the petition.

The holding of abandonment will not be withdrawn because the Office action was final, as was listed on the last page. By operation of law (statutory, which cannot be waived), the application became abandoned when a proper reply to the final Office action was not timely filed. Therefore, the petition to withdraw the holding of abandonment is **dismissed**.

The Office requests that petitioners submit their copy of the September 6, 2005 Summary Sheet PTOL-326. The undersigned suggests that petitioners file a petition under 37 CFR 1.137(a) and, in the alternative, under 37 CFR 1.137(b). If the petition under 37 CFR 1.137(a) is granted, the petition under 37 CFR 1.137(b) will be dismissed as moot.

The RCE mentioned in the instant petition is **not** present in the application file. Please submit another copy of the RCE with any future petition to revive.


Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries pertaining to this decision may be directed to the undersigned at (571) 272-3230.


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